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**Request for City Council Committee Action
From the City Attorney's Office**

Date: August 25, 2003
To: Ways & Means/Budget Committee
Referral to:

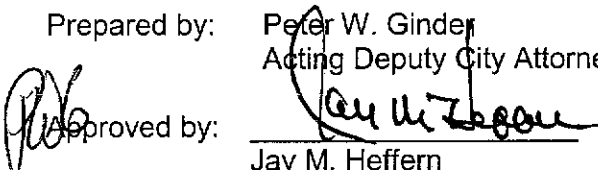
Subject: Amendment of Policy and Procedure for Defense and Indemnification of Employees

Recommendation: That the City Council amend the City Policy and Procedure for Defense and Indemnification of Employees (Petition No. 263244) passed November 7, 1997 to clarify that the City may invoke the procedures in its policy without a written request to defend submitted by the employee, and that officers employed by the City sitting on independent boards and commissions are subject to the Policy.

Previous Directives:

Prepared by: Peter W. Ginder
Acting Deputy City Attorney, Civil

Phone: 673-2478

Approved by: 
Jay M. Heffern
City Attorney

Presenter in Committee: Peter W. Ginder, Acting Deputy City Attorney, Civil

Financial Impact (Check those that apply)

- ☒ No financial impact - or - Action is within current department budget.
(If checked, go directly to Background/Supporting Information)
- ☐ Action requires an appropriation increase to the Capital Budget
- ☐ Action requires an appropriation increase to the Operating Budget
- ☐ Action provides increased revenue for appropriation increase
- ☐ Action requires use of contingency or reserves
- ☐ Other financial impact (Explain):
- ☐ Request provided to the Budget Office when provided to the Committee Coordinator

Background/Supporting Information

On November 7, 1997, the City Council adopted a policy and procedure for defense and indemnification of employees. In light of recent court decisions, it is appropriate to clarify the scope of the policy. One of the changes to the policy clarifies that the City may invoke the procedures outlined therein on its own initiative without a written request to defend submitted by the employee. In addition, the changes clarify that officers employed by the City sitting on independent boards and commissions are subject to the Policy. The City Attorney's recommends that the Council adopt these revisions to the policy. A copy of the revised policy is attached.

POLICY AND PROCEDURE FOR DEFENSE AND INDEMNIFICATION OF OFFICERS AND EMPLOYEES

PURPOSE

The purpose of this memorandum is to propose amendments to the a policy and procedure to be used in determining whether the City of Minneapolis ("City") should provide defense and indemnification to City officers and employees in light of recent court decisions and to clarify the scope of the policy. The changes to the Policy clarify that the City may invoke the procedures outlined on its own initiative without a written request to defend submitted by the employee and that officers and employees of the City sitting on independent boards and commissions are subject to the Policy.

POLICY

It is the policy of the City of Minneapolis to provide defense and indemnification in accordance with the public policy implicit in Minnesota Statutes, Chapter 466 and to protect those performing governmental services on behalf of the City of Minneapolis against risk of liability resulting from lawsuits. Because the City of Minneapolis is responsible for providing inspection and regulatory services and for maintaining law and order, many of its employees have a high risk of exposure to claims and civil liability. Consequently, it is the policy of the City to provide defense and indemnification for all of its officers and employees in accordance with the public policy articulated in Minnesota Statutes, Chapter 466.

SCOPE OF AVAILABILITY

The City shall defend any officer or employee, whether elected or appointed, for any tortious conduct arising out of any alleged act or omission occurring in the performance of the duties of his/her position. If the City determines that any officer or employee is guilty of malfeasance in office, willful neglect of duty, or bad faith, it shall not defend or indemnify that officer or employee.

This policy shall apply to officers and employees of the City of Minneapolis appointed by the City to sit on boards or commissions as representatives of the City if the board or commission does not provide defense and indemnification to the City representative.

The term "employee" includes all elected or appointed officers and employees of the City, including those officers or employees sitting on a board or commission as an authorized representative of the City of Minneapolis.

PROCEDURE

When an employee is served with a summons and complaint in a lawsuit, the employee must fill out a form requesting that the City defend the employee. This form shall be required in all lawsuits where employees are named as individual defendants. The employee shall submit the form to the department head for certification that the employee was acting within the scope of his/her employment and acting in the performance of the duties of his/her position. The Request to Defend form must be completed and submitted within ten (10) days of

the date that the employee was served with the Summons and Complaint.

The Request to Defend Form and Departmental Certification shall be sent to the City Attorney's Office. After the form and certification have been signed and presented to the City Attorney's Office, the City Attorney and department head will review the Request to Defend form and Departmental Certification to determine if the conduct occurred within the performance of the duties of the position and to make a preliminary determination whether the conduct involved malfeasance in office, willful neglect of duty or bad faith within the meaning of Minnesota Statutes, Chapter 466.

If the City Attorney and department head determine that the employee was acting within the performance of the duties of his/her position and that conduct did not constitute malfeasance, willful neglect of duty, or bad faith, the City Attorney's Office will represent the employee or retain separate counsel in accordance with ethical requirements.

If the City Attorney and department head determine that defense and indemnification is not appropriate because the employee was either not acting in the performance of the duties of the position or was acting in bad faith, malfeasance or willful neglect of duty, the City Attorney shall notify the employee of that preliminary decision.

A contract administrative law judge will be retained by the City to conduct a hearing, if desired by the employee, to determine whether the City has an obligation to provide a defense and indemnification to the employee. The employee may present evidence, witnesses and argument before the

administrative law judge and cross-examine witnesses. The administrative law judge shall issue findings of fact, conclusions of law and recommendation(s) to the City Council specifically addressing whether the employee was acting within the performance of the duties of his/her position, or is guilty of malfeasance, bad faith or willful neglect of duty. The recommendation(s) of the administrative law judge will be submitted to the City Council for a final decision.

If the department head and the City Attorney are unable to agree on whether the employee should be defended and indemnified by the City, the case will be presented to the City Council (or, in cases involving the Police Department, to the Mayor) for a preliminary decision. If the City Council (or the Mayor in cases involving the Police Department) determines that defense and indemnification is appropriate, the employee shall be immediately notified. The City Attorney's Office shall provide a defense in accordance with ethical principles ~~principals~~. If the City Council or Mayor preliminarily determine that the employee should not be defended or indemnified by the City, then the matter shall be referred to an administrative law judge for a hearing as described above. ~~Attached to this proposed policy and procedure is a flow chart which is designed to illustrate graphically the City's procedure for providing defense and indemnification to City employees.~~

In the interests of expediting the resolution of issues of defense and indemnification, the City may initiate the procedures outlined herein on its own initiative without a request to defend form from the employee or prior to service of a Summons and Complaint on the employee. In a situation where the City

initiates the defense and indemnification process, the procedures outlined above shall be followed as if the employee had requested defense and indemnification.

02A-01277\Indemnification Policy 08-04-03